IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 20 OF 2001.

Shri Vidal D'Souza,
H. No. 797/1, Bairo
Dias, Goa Velha,
Ilhas. ... Petitioner.

Versus

1. Union of India,
   Ministry of Health &
   Family Welfare (Dept.
   of Family Welfare),
   through Under Secretary,
   New Delhi.
2. State of Goa through
   its Secretary Health,
   Secretariat, Panaji.
3. Dean, Goa Medical
   College, Bambolim.
4. Director (Family
   Welfare) Directorate
   of Health, Campal,
   Panaji. ... Respondents.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. J. Godinho, Advocate for the Petitioner.

Mr. J.S. Vaz, Additional Central Government Standing Counsel for the Respondent No. 1.

Mr. P.A. Kamat, Additional Government Advocate for the Respondent No. 2.

Coram : F.I. REBELLO AND
P.V. HARDAS, JJ.

Date : 18th June 2003.

ORAL JUDGMENT (PER REBELLO, J.)

Petitioner was earlier appointed to the post of Lecturer in Health Education under the All India Hospitals Post Partum Programme on ad-hoc basis with effect from 28th November 1986 in the initial pay scale of Rs. 700-1300. On being recommended by the Goa Public Service Commission, by Order dated 15th November

1991, the petitioner was appointed as Lecturer in the pay scale of Rs. 2200-4000. The All India Post Partum Programme is a scheme framed by the Central Government. Under the Scheme, in terms of Circular, dated 5th March 1985, it is clearly set out that no additional post would be created and the existing person on the basis of assessment, would be promoted to the next higher level. The position held by such incumbent would be personal to them. Recruitment Rules have been framed. The Recruitment Rules provide (i) appointment in the medical service and (ii) appointment to non-medical posts. The petitioner was appointed to a non-medical post as a Lecturer in Health Education.

The petitioner came to be confirmed on recommendation of the G.P.S.C. by Order dated 3rd June 1998 in the post of Lecturer in Health Education. In terms of the Scheme framed, respondent no. 2 issued an Order on 29th November 2002 giving a merit promotion to the petitioner in the post of Lecturer, in Post Partum Family Welfare Programme in Goa Medical College in the pay scale of Rs. 10,000-325-15,200. This is the scale of pay of an Associate Professor on the medical side. Incidentally it is the post of Lecturer (senior scale) recognised by the University Grants Commission Scheme for merit promotion of teachers and other academical staff in Universities and other Colleges.

2. By the present petition, the petitioner has raised two grievances. It is firstly contented that he be appointed to the post of Reader in the Goa Medical College to give effect to the Merit Promotion Scheme under the University Grants Commission. This relief is opposed on behalf of the respondents by contending that there is no post of Reader in the Goa Medical College or in the Department of Health in the non-medical service. The petitioner's case was placed before the respondents for consideration and the respondents considered that the petitioner was entitled to a promotional pay scale of Assistant Professor which would be the equivalent promotional scale on the medical side. It is also pointed out that the post is personal to the petitioner.

The post of Reader is one of the posts recognised by the University Grant Commission, but that post is higher in scale than the post of Lecturer (Senior Scale), which is the scale now being given to the petitioner and which would be the next promotional scale which the petitioner would be entitled to if he was appointed in a College or University approved by the University Grant Commission. What the respondents have done, therefore, is to find an equivalent scale in the cadre of medical service and grant the same to the petitioner. The contention of the petitioner that a new post must be created or his post must be upgraded at

least does not find any place in the scheme as formulated. What is contemplated is that a person so appointed would be entitled to promotion to the next higher level. That expression will have to be construed to mean, that in the absence of a post, the promotional pay scale of the next higher post will have to be given. As there is no higher post than that of Lecturer, there is no question of promoting the petitioner. The Circular will, therefore, have to be construed to mean the promotional scale. The Circular also bars creation of additional post. The petitioner has been so given and in these circumstances, we are of the opinion that the relief sought by the petitioner herein for equivalence of the post of Reader cannot be granted. That relief is rejected.

3. The next contention of the petitioner is that he was appointed on regular basis on 15th November 1991. The period of 8 years would expire on 14th November 1999 and, therefore, he would be entitled to the next higher scale from 15th November 1999. The respondents, however, gave the scale with effect from 29th November 2002 pursuant to the recommendation of the Goa Public Service Commission dated 6th November 2002. Insofar as this contention is concerned, in our opinion, the contention has merit. It is no doubt true that the petitioner would otherwise have to be qualified for

being considered for the promotional scale. There is no dispute that he is eligible. The date of the meeting of the Selection Committee, therefore, would be immaterial. What is material is that he would be be granted the scale on completion of eight years regular service, if otherwise he was eligible. The mere fact that the Selection Committee did not meet prior to 6th November 2002, cannot result in denying the promotional pay scale to the petitioner as from 15th November 1999. The Committee has found the petitioner was eligible and, therefore, in our opinion, though the Committee recommended from 6th November 2002, the petitioner would be entitled to the promotional scale from 15th November 1999. In the instant case there was no question of a post existing for being promoted. The same person was eligible for the next higher scale. In that light of the matter, the pay scale of Rs. 10,000-15,200, which has been granted to the petitioner from 29th November 2002 will have to be in fact from 15th November 1999.

4. In the light of that the petition has to partly succeed. The respondents are directed to place the petitioner in the pay scale of Rs. 10,000-325-15,200 from 15th November 1999 and pay to him all consequential benefits including back wages which he is entitled, from 15th November 1999 within a period of 12 weeks from today. Rule made absolute.

There shall be no order as to costs.

(F.I. REBELLO)
JUDGE.

(P.V. HARDAS)
JUDGE.

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